



small public company task force

September 13, 2006
Ms. Nancy M. Morris
Federal Advisory Committee Management Officer
U.S. Securities and Exchange Commission
100 F St. N.E.
Washington, D.C. 20549-1090
File Number: S7-06-03

Sent via email to: rule-comments@sec.gov

Dear Ms. Morris,

Financial Executives International's ("FEI's") Small Public Company Task Force ("SPCTF") is pleased to respond to the proposed rule (Release No. 33-8731) issued by the U.S. Securities and Exchange Commission (SEC) on August 9, 2006 entitled, "Internal Control Over Financial Reporting In Exchange Act Periodic Reports of Non-Accelerated Filers and Newly Public Companies." This proposed rule would extend the compliance dates for the management report and auditor's attestation on internal control over financial reporting required by Section 404 of the Sarbanes-Oxley Act ("Section 404") and related rules of the SEC and the Public Company Accounting Oversight Board (PCAOB).

FEI is a leading international organization of 15,000 members, including Chief Financial Officers, Controllers, Treasurers, Tax Executives and other senior financial executives. FEI's SPCTF was created to represent the views of smaller public companies. This document reflects the views of FEI's SPCTF, and not necessarily the views of FEI or its individual members.

FEI's SPCTF commends the SEC for issuing this release. We believe that all public companies, regardless of size, should be subject to the requirements of the Sarbanes-Oxley Act, and are supportive of the additional time being proposed for smaller public companies to implement the SEC and PCAOB rules under Sarbanes-Oxley Section 404. We strongly support the concept that internal controls are fundamental to producing accurate financial statements.

We are also hopeful that additional guidance and potential rule amendments being contemplated by the SEC and PCAOB will support a logical and cost effective approach to internal control reporting which is flexible enough to meet the needs of larger companies, as well as the realities of how smaller business and their internal control systems operate - and should be evaluated.

Additionally, we would encourage you to look at your progress by the end of this year, and consider if the proposed extended compliance dates will still be adequate for smaller companies to implement the new/amended SEC and PCAOB guidance for internal control reporting under Section 404, based on the date such further guidance/amendments are issued.

As stated in previous comment letters filed not only by FEI's SPCTF, but also by FEI's Committee on Corporate Reporting (CCR), as well as Congressional testimony we have provided, we believe the SEC and PCAOB have the regulatory authority – and responsibility – to correct underlying concerns of our members about inefficiencies and ineffectiveness prompted by the current SEC and PCAOB rules on internal control reporting. We believe the SEC and PCAOB have the tools and authority to amend their rules accordingly, to better reflect the intent of the Sarbanes-Oxley Act.

In essence, the proposed extensions simply further the existing phased-in approach for large and small public companies, taking into consideration that regulators and many in the private sector believed it would be unwise to amend the SEC and PCAOB rules prior to completion of the second year experience by larger public companies before contemplating amendments to the rules. As such, without the proposed extension, smaller public companies would have to adopt two sets of rules (the existing rules and potential amended rules noted below) in the space of one year, which would be particularly challenging for them and clearly not lead to efficient or effective implementation by smaller public companies which make up the bulk of our nation's public companies.

Management Report

Specifically, FEI's SPCTF supports the SEC's proposal to extend the compliance dates for small public companies (non-accelerated filers – generally those with less than \$75 million market cap as further defined by the SEC) by an additional 6 months (from fiscal years ending on or after ("FYE") 7/15/07 to FYE 12/15/07) to file their management report on internal control in compliance with the Section 404 and the related rules of the SEC.

We believe this additional time will help smaller public companies adopt more efficiently and effectively the potential further rule amendments to the SEC's rules and the Public Company Accounting Oversight Board's (PCAOB's) standards contemplated in the SEC's recent Concept Release on Management Reporting issued on July 11 (Release No. 34-54122) - which captured many of the key recommendations of the SEC Advisory Committee for Smaller Public Companies - and related amendments to be issued by the PCAOB in accordance with its "Four Point Plan to Improve Internal Control Reporting" announced on May 17 and outlined by PCAOB Chief Auditor Tom Ray at the June, 2006 Standing Advisory Group (SAG) meeting (some of which relate to the auditor's responsibilities regarding management's assessment).

We would however suggest that ***the measurement date for determining accelerated or nonaccelerated filer status be moved to the beginning of the fiscal year*** instead of mid-year. We expect that companies will be more efficient, and thus more cost effective, if they can enter their fiscal year knowing the rules on day one.

Auditor's Report

Additionally, FEI's SPCTF commends the SEC for proposing to extend the compliance date for small public companies (again, non-accelerated filers as defined above) to file their auditor's attestations under Section 404 and the related SEC and PCAOB rules from FYE 7/17/07, to FYE 12/15/08 (one year after the proposed extended deadline for the management report to be filed), since the contemplated amendments to PCAOB's Auditing Standard No. 2 ("An Audit of Internal Control Over Financial Reporting Performed in Conjunction with an Audit of the Financial Statements") have not even been issued by the PCAOB yet, and "getting it right" in terms of effective due process including public comment periods on both the SEC and PCAOB proposed rule changes will take some time.

Without the above proposed extensions, small public companies would have less than one year to adopt any potential amendments to the SEC and PCAOB rules, which would further challenge

small public companies that have less financial and human resources available to adopt such rules than accelerated filers or large accelerated filers in particular, posing a challenge to the smaller public companies that make up the bulk of public companies in the U.S. market.

Based on feedback provided to the SEC at their first and second year roundtables on implementation of Section 404 in April 2005 and May 2006 respectively, the fact that there was less than one year between the issuance date of the PCAOB standard (AS2) and the compliance deadline for accelerated filers put an enormous amount of pressure on public companies and their auditors, in which unnecessary duplication of work between auditors and management occurred, and other costs for auditors and related consulting services skyrocketed due to the short time to implement the final rule. We believe the SEC's proposed extension of time for both the management report and auditor's attestation for smaller public companies will make good use of the "learnings" from the first and second year experience of larger public companies to avoid repeating inefficiencies that can be avoided.

The proposed extension will provide needed time for the SEC and PCAOB to issue final rule amendments to make the implementation of Section 404 more efficient and effective for public companies of all sizes without forcing smaller public companies to adopt two sets of rules (today's rules and amended rules) in less than a year.

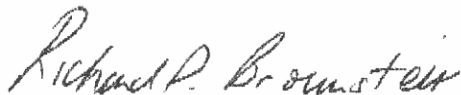
Foreign Private Issuers

We support inclusion of non-accelerated foreign private issuers with domestic non-accelerated filers subject to the proposed extensions. This reflects the increasing globalization of the economy and that smaller firms regardless of country of origin face similar resource challenges.

Additionally, we commend the SEC on issuing its tandem final rule (Release No. 33-8730A) providing an additional year (to FYE 7/15/08) for "accelerated" foreign private issuers other than "large" accelerated filers (i.e., foreign private issuers with more than \$75 million market cap, but less than \$700 million market cap) to file their Sarbanes-Oxley Section 404-b auditor attestations on internal control, and maintaining the current deadline (FYE 7/15/06) for then to file their Section 404-a management report on internal control. We would also not object if the SEC were to further conform the deadlines for foreign private issuers to be as of December 15 (instead of July 15) in a given year, similar to the U.S. filer deadlines.

Thank you for considering our views. We would be happy to discuss this further at your convenience or respond to any questions you may have. Please feel free to contact Serena Dávila at sdavila@fei.org , (202) 626-7809 or Rick Brounstein at broun@comcast.net, (510) 774-1969 should you have any questions.

Sincerely,



Richard D. Brounstein
Chairman, Small Public Company Task Force (SPCTF)
Financial Executives International